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**August 14, 2015**

Acushnet Co.  
Attn: Eric Estelle  
2819 Loker Avenue E  
Carlsbad, CA 92010

**VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

United States Corporation Company  
2710 Gateway Oaks Dr Ste 150N  
Sacramento, CA 95833

**Re: Clean Water Act Notice of Intent to Sue/60-Day Notice Letter  
Acushnet Violations of General Industrial Permit**

Dear Mr. Estelle:

Please accept this letter on behalf of the Coastal Environmental Rights Foundation (CERF) regarding Acushnet Company's violations of the State Water Resources Control Board Water Quality Order No. 97-03-DWQ, Natural Pollutant Discharge Elimination System (NPDES), General Permit No. CAS000001, and Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities (General Industrial Permit).<sup>1</sup> This letter constitutes CERF's notice of intent to sue for violations of the Clean Water Act and General Industrial Permit for Acushnet Company's facility located at 2819 Loker Ave E Carlsbad California 92010 ("Facility" or "Acushnet"), as set forth in more detail below.

Section 505(b) of the Clean Water Act requires that sixty (60) days prior to the initiation of a citizen's civil lawsuit in Federal District Court under Section 505(a) of the Act, a citizen must give notice of the violations and the intent to sue to the violator, the Administrator of the U.S. Environmental Protection Agency, the Regional Administrator of the U.S. Environmental Protection Agency for the region in which the violations have occurred, the U.S. Attorney General, and the Chief Administrative Officer for the State in which the violations have occurred (33 U.S.C. § 1365(b)(1)(A)). This letter provides notice of Acushnet's Clean Water Act violations and CERF's intent to sue.

**I. Coastal Environmental Rights Foundation (CERF)**

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<sup>1</sup> On April 1, 2014, the State Water Resources Control Board adopted Order No. 2014-0057-DWQ, which amends the Industrial General Permit ("New Industrial Permit"). These amendments become effective on July 1, 2015. All references to the General Industrial Permit are to the Permit as it existed at the time of the violations noted herein.

CERF is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Encinitas, CA. CERF is dedicated to the preservation, protection, and defense of the environment, the wildlife, and the natural resources of the California Coast. Members of CERF use and enjoy the waters into which pollutants from Acushnet's ongoing illegal activities are discharged into Agua Hedionda Creek, Agua Hedionda Lagoon, and eventually the Pacific Ocean. The public and members of CERF use these receiving waters to fish, boat, kayak, surf, swim, scuba dive, birdwatch, view wildlife, and to engage in scientific studies. The discharge of pollutants by the Acushnet Facility affects and impairs each of these uses. Thus, the interests of CERF's members have been, are being, and will continue to be adversely affected by Acushnet Owners and/or Operators' failure to comply with the Clean Water Act and the General Industrial Permit.

## **II. Storm Water Pollution and the General Industrial Permit**

### **A. Duty to Comply**

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. (See 33 U.S.C. § 1311 (a)). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the General Industrial Permit in order to lawfully discharge. Acushnet enrolled as a discharger subject to the General Industrial Permit on October 15, 1999 for its facility at 2819 Loker Ave E, Carlsbad California, 92010. Acushnet also filed a Notice of Intent to enroll under the New Industrial Permit on June 24, 2015

Pursuant to Section C(1) of the General Industrial Permit, a facility operator must comply with all conditions of the General Industrial Permit. Failure to comply with the General Industrial Permit is a Clean Water Act violation. (General Industrial Permit, § C.1). Any non-compliance further exposes an owner/operator to an (a) enforcement action; (b) General Industrial Permit termination, revocation and re-issuance, or modification; or (c) denial of a General Industrial Permit renewal application. As an enrollee, Acushnet has a duty to comply with the General Industrial Permit and is subject to all of the provisions therein.

### **B. Failure to Monitor**

The Acushnet Owners and/or Operators have failed to sample as required for the 2010-2011, 2012-2013, and 2014-2015 years. In the 2010-2011 wet season, only one rain event was monitored. In the 2012-2013 wet season, only one discharge location was monitored, and only one rain event was monitored. For the 2014-2015 wet season, only one discharge location was sampled during the second rain event.

Sections B(5) and (7) of the General Industrial Permit require dischargers to visually observe and collect samples of storm water discharged from all locations where storm water is discharged. Facility operators, including the Acushnet Owners and/or Operators, were

required to collect samples from at least two qualifying storm events each wet season, including one set of samples during the first storm event of the wet season. Required samples were required to be collected from all discharge points and during the first hour of the storm water discharge from the Facility.

The Acushnet Owners and/or Operators have failed to meet these monitoring requirements for the 2010-2011, 2012-2013, and 2014-2015 periods, despite the fact that there were numerous qualifying rain events during these wet seasons. (See Exhibit A, rainfall data). The Acushnet Owners and/or Operators therefore had numerous opportunities to sample but failed to do so.

Further, when Acushnet did sample between 2010-2015, only one or two locations were sampled. The Acushnet SWPPP Site Map reflected three discharge locations would be sampled. (SWPPP, 07012011, Figure 2-1). During rain events, however, only discharge locations "NE Corner" and "South Center" were sampled.

Every day the Acushnet Owners and/or Operators failed to adequately monitor the Facility is a separate and distinct violation of the General Industrial Permit, New Industrial Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). These violations are ongoing and the Acushnet Owners and/or Operators will continue to be in violation every day they fail to adequately monitor the Facility. The Acushnet Owners and/or Operators are thus subject to penalties in accordance with the General Industrial Permit – punishable by a minimum of \$37,500 per day of violation. (33 U.S.C. §1319(d); 40 CFR 19.4).

**C. The Acushnet Facility Discharges Contaminated Storm Water in Violation of the General Industrial Permit**

Though the Acushnet Owners and/or Operators have consistently failed to monitor as required, what monitoring has been done indicates consistent exceedances and violations of the General Industrial Permit. Discharge Prohibition A(2) of the General Industrial Permit prohibits storm water discharges and authorized non-storm water discharges which cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the Storm Water Permit prohibits storm water discharges to surface or groundwater that adversely impact human health or the environment. In addition, receiving Water Limitation C(2) prohibits storm water discharges and authorized non-storm water discharges, which cause or contribute to an exceedance of any water quality standards, such as the CTR or applicable Basin Plan water quality standards. "The California Toxics Rule ("CTR"), 40 C.F.R. 131.38, is an applicable water quality standard." (*Baykeeper v. Kramer Metals, Inc.* (C.D.Cal. 2009) 619 F.Supp.2d 914, 926). "In sum, the CTR is a water quality standard in the General Permit, Receiving Water Limitation C(2). A permittee violates Receiving Water Limitation C(2) when it 'causes or contributes to an exceedance of' such a standard, including the CTR." (*Id.* at 927).

If a discharger violates Water Quality Standards, the General Industrial Permit and the Clean Water Act require that the discharger implement more stringent controls necessary to meet such Water Quality Standards.(General Industrial Permit, Fact Sheet p. viii; 33 U.S.C. § 1311(b)(1)(C)). The Acushnet Owners and/or Operators have failed to comply with this requirement, routinely violating Water Quality Standards without implementing BMPs to achieve



BAT/BCT or revising its SWPPP pursuant to section (C)(3).

As demonstrated by sample data submitted by Acushnet, from at least October 19, 2010 through the present, Acushnet Owners and/or Operators have discharged and continue to discharge storm water containing pollutants at levels in violation of water quality prohibitions and limitations during every significant rain event. The Acushnet Facility's sampling data reflects numerous discharge violations (see below). Acushnet's own sampling data is not subject to impeachment. (*Baykeeper, supra*, 619 F.Supp. 2d at 927, citing *Sierra Club v. Union Oil Co. of Cal.*, (9th Cir. 1987) 813 F.2d 1480, 1492 ["when a permittee's reports indicate that the permittee has exceeded permit limitations, the permittee may not impeach its own reports by showing sampling error"]).

This data further demonstrates the Acushnet Facility continuously discharges contaminated storm water during rain events which have not been sampled. (See Exhibit A, rainfall data).

Date	Location	Parameter	Units	Result	Benchmark/WQO
10/19/2010	SC	Zinc	mg/L	.176*	.13
11/11/2011	NE	Copper	mg/L	.091	.013
11/11/2011	NE	Zinc	mg/L	.73	.13
11/11/2011	NE	Iron	mg/L	2.44	1
11/04/2011	SC	Copper	mg/L	.067	.013
11/04/2011	SC	Iron	mg/L	2.58	1
12/12/2011	NE	Copper	mg/L	.064	.013
12/12/2011	NE	Zinc	mg/L	.562	.13
12/12/2011	SC	Copper	mg/L	.072	.013
12/12/2011	SC	Zinc	mg/L	.91	.13
12/12/2011	SC	Iron	mg/L	4.02	1
12/12/2011	SC	TUS	mg/L	108	100
2/19/2013	NE	Zinc	mg/L	.217	.13
10/09/2013	NE	Copper	mg/L	.153	.013
10/09/2013	NE	Zinc	mg/L	1.36	.13
10/09/2013	NE	Iron	mg/L	4.48	1
10/09/2013	SC	Copper	mg/L	.126	.013
10/09/2013	SC	Zinc	mg/L	1.46	.13
10/09/2013	SC	Iron	mg/L	4.7	1
10/09/2013	SC	Conductivity	umhos/cm	239	200
04/01/2014	NE	Zinc	mg/L	.58	.13
04/01/2014	NE	Iron	mg/L	1.39	1
04/01/2014	NE	Conductivity	umhos/cm	237	200
04/01/2014	SC	Zinc	mg/L	.677	.13
04/01/2014	SC	Iron	mg/L	2.48	1
04/01/2014	SC	Conductivity	umhos/cm	253	200

04/01/2014	SC	TUS	mg/L	112	100
12/16/2014	SC	Zinc	mg/L	.259	.13
12/16/2014	SC	Conductivity	umhos/cm	232	200
01/26/2015	SC	Zinc	mg/L	.298	.13
01/26/2015	SC	Iron	mg/L	3.54	1
01/26/2015	SC	TUS	mg/L	119	100
*samples reported for 10/19/2010 appear to be off by a factor of 10 <sup>6</sup>					

#### **D. Inadequate Storm Water Pollution Prevention Plan**

One of the main requirements for the General Industrial Permit is the Storm Water Pollution Prevention Plan (SWPPP). (General Industrial Permit §A). Acushnet has not developed an adequate SWPPP as required by the General Permit.

The SWPPP has two major objectives: (1) to help identify the sources of pollution that affect the quality of industrial storm water discharges and authorized non-storm water discharges, and (2) to describe and ensure the implementation of BMPs to reduce or prevent pollutants in industrial storm water discharges and authorized non-storm water discharges. (General Industrial Permit, Fact Sheet, p. IX).

The latest Acushnet SWPPP, dated August 2015 is non-compliant. The SWPPP claims the Facility discharges to the Pacific Ocean, and fails to list any TMDLs for evaluation. However, the Facility discharges to Agua Hedionda Creek and Agua Hedionda Lagoon. Agua Hedionda Creek is 303(d) listed for multiple constituents, including Total Dissolved Solids, Nitrogen as N, Selenium, Phosphorus, and Manganese. Thus, the SWPPP fails to evaluate the Facility's potential contribution of pollutants for which these receiving waters are listed. (New Industrial Permit, §X.G.2.a.ix; XI.B.6.e.).

As mentioned above, until recently, the Acushnet SWPPP Site Map reflected three discharge locations would be sampled. (SWPPP, 07012011, Figure 2-1). However, only discharge locations "NE Corner" and "South Center" were sampled.

Further, the latest SWPPP, dated August 2015, reflects only two sampling locations. (SWPPP, August 2015, Section 6.3). One of the discharge locations is new, resulting in elimination of a prior discharge sample location: the northeast corner. The August 2015 SWPPP states the northeast corner does not collect stormwater from industrial activity. (*Id.*). However, the Site Map reflects that industrial activity does occur at the southeast corner and the culvert on the eastern side of the property conveys such stormwater to discharge point SW2 in the northeast corner. (SWPPP, August 2015, Site Map). More importantly, the Facility's monitoring data indicates contaminated stormwater is conveyed to the northeast corner. (See above). Therefore, the Facility should continue to monitor this discharge point. (See New Industrial Permit, § XI.B.4).

Every day the Acushnet Owners and/or Operators operate the Facility without an

adequate SWPPP, is a separate and distinct violation of the General Industrial Permit, New Industrial Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Acushnet Owners and/or Operators have been in daily and continuous violation of the General Industrial Permit for not submitting an adequate SWPPP since at least July 1, 2011. These violations are ongoing and the Acushnet Owners and/or Operators will continue to be in violation every day they fail provide an adequate SWPPP for the Facility. Thus, the Acushnet Owners and/or Operators are liable for civil penalties of up to \$37,500 per day of violation for 1,830 violations of the General Industrial Permit and the Clean Water Act.

### **III. Remedies**

Upon expiration of the 60-day period, CERF will file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced violations. During the 60-day notice period, however, CERF is willing to discuss effective remedies for the violation noted in this letter. If you wish to pursue such discussions in the absence of litigation, it is suggested that you initiate those discussions immediately. If good faith negotiations are not being made, at the close of the 60-day notice period, CERF will move forward expeditiously with litigation.

Acushnet must develop and implement an updated SWPPP, install BMPs to address the numerous water quality violations, and implement a robust monitoring plan. Should the Acushnet Owners and/or Operators fail to do so, CERF will file an action against Acushnet for its prior, current, and anticipated violations of the Clean Water Act. CERF's action will seek all remedies available under the Clean Water Act § 1365(a)(d). CERF will seek the maximum penalty available under the law which is \$37,500 per day.

CERF may further seek a court order to prevent Acushnet from discharging pollutants. A strong or substantial likelihood of success on the merits of CERF's claim exists, and irreparable injuries to the public, public trust resources, and the environments will result if the Facility further discharges pollutants into Agua Hedionda Creek and Agua Hedionda Lagoon. The cessation of the Facility's discharge will not cause substantial harm to others, and the public interest would be served in preventing discharge of pollutants into receiving waters.

Lastly, section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs, including attorneys' and experts' fees. CERF will seek to recover all of its costs and fees pursuant to section 505(d).

### **IV. Conclusion**

CERF has retained legal counsel to represent it in this matter. Please direct all communications to Coast Law Group:

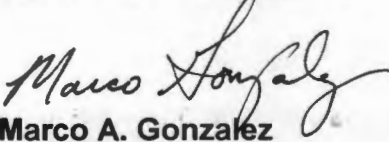
**Marco A. Gonzalez**  
**COAST LAW GROUP LLP**  
**1140 S. Coast Highway 101**  
**Encinitas, CA 92024**  
**Tel: (760) 942-8505 x 102**

Fax: (760) 942-8515  
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CERF will entertain settlement discussions during the 60-day notice period. Should you wish to pursue settlement, please contact Coast Law Group LLP at your earliest convenience.

Sincerely,

COAST LAW GROUP LLP

  
Marco A. Gonzalez



Livia Borak  
Attorneys for  
Coastal Environmental Rights Foundation

cc:

Jared Blumenfeld, Region 9 Administrator Alexis Strauss, Deputy Regional Administrator U.S. EPA, Region 9 75 Hawthorne Street San Francisco, CA, 94105	Dave Gibson, Executive Officer Catherine Hagan, Staff Counsel San Diego Regional Water Quality Control Board 2375 Northside Drive, Suite 100 San Diego, CA 92108-2700
Gina McCarthy EPA Administrator Mail Code 4101M USEP A Ariel Rios Building (AR) 1200 Pennsylvania Avenue N.W. Washington, DC 20004	Thomas Howard Executive Director State Water Resources Control Board P.O. Box 100 Sacramento, CA 95812-0110





**EXHIBIT A**



# Qualifying Rainfall Events (.1 inches of rain or more) During Business Hours

## NOAA National Climactic Data Center

Stations: COOP:047740 - SAN DIEGO LINDBERGH FIELD, CA US

Data Types: HPCP - Precipitation (100th of an inch)

2009

Month	Inches	Time:
6-Feb	0.61	
7-Feb	0.74	
8-Feb	0.2	
9-Feb	0.21	8:00 AM
10-Feb	0.34	
14-Feb	0.13	
16-Feb	0.62	12:00 PM
22-Mar	0.22	11:00 AM
31-May	0.13	
4-Jun	0.13	
29-Nov	0.35	
7-Dec	0.13	9:00 AM
8-Dec	1.99	
12-Dec	0.13	
13-Dec	0.88	
<b>TOTAL</b>	<b>6.81</b>	

2010

Month	Inches	Time:
18-Jan	0.1	4:00 PM
19-Jan	1.4	1:00 PM
20-Jan	7.4	
21-Jan	1.65	12:00 PM
22-Jan	1.41	
23-Jan	0.29	
27-Jan	0.14	
6-Feb	0.17	11:00 AM
7-Feb	0.27	
10-Feb	0.47	
20-Feb	0.49	
22-Feb	0.12	
27-Feb	0.2	
28-Feb	1.27	
7-Mar	0.38	10:00 AM
8-Mar	0.3	
1-Apr	0.49	
6-Apr	0.15	
12-Apr	0.65	4:30 PM
22-Apr	0.47	
6-Oct	0.43	
20-Oct	0.9	12:00 PM
21-Oct	0.12	
30-Oct	0.38	8:00 AM
20-Nov	0.69	2:00 PM
21-Nov	0.12	11:00 AM
24-Nov	0.87	
20-Dec	0.83	
21-Dec	3.46	8:00 AM
22-Dec	0.48	8:00 AM
26-Dec	0.69	
30-Dec	1.8	9:00 AM
<b>TOTAL</b>	<b>28.59</b>	





# **Qualifying Rainfall Events (.1 inches of rain or more) During Business Hours**

## **NOAA National Climactic Data Center**

**Stations:** COOP:047740 - SAN DIEGO LINDBERGH FIELD, CA US

**Data Types:** HPCP - Precipitation (100th of an inch)

**2011**

<u>Month</u>	<u>Inches</u>	<u>Time:</u>
3-Jan	0.85	
4-Jan	0.1	
18-Feb	0.24	5:00 AM
20-Feb	0.2	
26-Feb	0.8	
27-Feb	0.22	
7-Mar	0.2	
21-Mar	0.89	
22-Mar	0.14	
24-Mar	0.25	
26-Mar	0.15	
9-Apr	0.14	
18-May	0.73	
29-May	0.1	
4-Nov	0.34	4:00 PM
12-Nov	1.04	1:00 PM
12-Dec	0.96	9:00 AM
<b>TOTAL</b>	<b>7.35</b>	

**2012**

<u>Month</u>	<u>Inches</u>	<u>Time:</u>
23-Jan	0.2	2:00 PM
24-Jan	0.28	
7-Feb	0.23	4:00 PM
14-Feb	0.34	
16-Feb	0.2	
28-Feb	0.72	
17-Mar	0.24	1:00 PM
18-Mar	0.47	
25-Mar	0.43	5:00 PM
1-Apr	0.11	
11-Apr	0.45	
13-Apr	0.33	4:00 PM
26-Apr	0.61	
12-Oct	0.77	
8-Nov	0.14	
1-Dec	0.23	
13-Dec	1.6	8:00 AM
14-Dec	0.28	
15-Dec	0.37	
19-Dec	0.47	
25-Dec	0.37	
30-Dec	0.28	
<b>TOTAL</b>	<b>9.12</b>	



**Qualifying Rainfall Events (.1 inches of rain or more) During Business Hours**

**NOAA National Climactic Data Center**

**Stations: COOP:047740 - SAN DIEGO LINDBERGH FIELD, CA US**

**Data Types: HPCP - Precipitation (100th of an inch)**

**2013**

<u>Month</u>	<u>Inches</u>
7-Jan	0.26
25-Jan	0.23
26-Jan	0.73
27-Jan	0.1
9-Feb	0.15
20-Feb	0.3
9-Mar	0.2
21-Nov	0.28
22-Nov	0.2
8-Dec	0.17
20-Dec	0.1
<b>TOTAL</b>	<b>2.72</b>

**2014**

<u>Month</u>	<u>Inches</u>
3-Feb	0.25
7-Feb	0.37
27-Feb	0.1
28-Feb	0.46
1-Mar	0.76
2-Mar	0.6
2-Apr	0.22
26-Apr	0.13
<b>TOTAL</b>	<b>2.89</b>

